

California Regional Water Quality Control Board  
North Coast Region

Administrative Civil Liability Complaint No. R1-2010-0013

In the Matter of  
Portosan Co., LLC  
WDID No. 1 49I018140

For

Failure to File an Annual Storm Water Report  
For Fiscal Years 2007/2008 and 2008/2009

Sonoma County

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), hereby gives notice that:

1. Portosan Co., LLC (hereinafter Discharger) operates a portable toilet storage site located in Sonoma County at 1512 Copperhill Parkway, Santa Rosa, California (hereinafter Facility).
2. On November 16, 1990, the U.S. Environmental Protection Agency issued regulations for storm water discharges. Subsequently, the State Water Resources Control Board (State Water Board) adopted Water Quality Order No. 91-013-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (hereinafter General Permit). On September 17, 1992, the State Water Board amended the General Permit, and on August 17, 1997, the State Water Board issued Order No. 97-03-DWQ, which revised and replaced the General Permit.
3. Provision E(1) of the General Permit requires that all facility operators seeking coverage under the General Permit file a Notice of Intent (NOI) for each of the facilities they operate. The Discharger filed a NOI for the Portosan Co LLC site on May 9, 2003, and was assigned WDID No. 1 49I018140 for the Facility.
4. Section B(14) of the General Permit requires that all facility operators submit an Annual Report by July 1<sup>st</sup> of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located.
5. The Discharger failed to submit its 2007/2008 and 2008/2009 Annual Reports for the Facility by July 1, 2008 and July 1, 2009, respectively.
6. California Water Code (hereinafter "CWC") section 13399.31(b) requires the Regional Water Board to notify each discharger who has failed to submit an Annual Report as required by the Regional Water Board, of the discharger's

noncompliance and the penalties therefrom. If a discharger who is so notified, fails to submit an Annual Report within 30 days of notification, CWC section 13399.31(c) requires that the Regional Water Board's Executive Officer send a second notice to that discharger. If the discharger still fails to submit the required annual report within 60 days from the first notice, CWC section 13399.33(d) requires the Regional Water Board to impose penalties.

7. On August 8, 2008, the Executive Officer issued the first Notice of Noncompliance to the Discharger citing failure to submit the 2007/2008 Annual Report. The Discharger accepted certified mail for this Notice. On September 22, 2008, the Executive Officer issued the second Notice of Noncompliance letter to the Discharger. The discharger did not accept the certified mail for this notice.
8. On August 6, 2009 the Executive Officer issued the first Notice of Noncompliance to the Discharger citing failure to submit the 2008/2009 Annual Report. The Discharger accepted certified mail for this Notice. On September 15, 2009, the Executive Officer issued the second Notice of Noncompliance letter to the Discharger. The discharger accepted the certified mail for this notice.
9. The 2007/2008 and 2008/2009 Annual Storm Water Reports were due July 1, 2008 and July 1, 2009, respectively. Neither report has been received; both are still due. The 2007/2008 annual report is 548 days late, as of December 31, 2009 and the 2008/2009 annual report is 183 days late, as of December 31, 2009.
10. CWC section 13385(a)(2) provides for civil liability for a violation of any waste discharge requirements established pursuant to Chapter 5, Division 7 of the CWC. Pursuant to CWC 13385(c)(1), the Discharger is subject to discretionary administrative civil liabilities of up to TEN THOUSAND DOLLARS (\$10,000.00) for each day in which a violation occurs (i.e., each day the Permittee fails to submit an annual report after July 1 of each year). The Regional Water Board may assess discretionary administrative civil liability on a daily basis commencing with the date that the violation(s) first occurred.
11. Pursuant to CWC section 13385, the maximum potential penalty for failure to submit the Annual Storm Water Report for the 2007/2008 fiscal year is \$5,480,000 (548 days x \$10,000 per day) for violations through December 31, 2009.
12. Pursuant to CWC section 13385, the maximum potential administrative civil liability for failure to submit the Annual Storm Water Report for the 2008/2009 fiscal year is \$1,830,000 (183 days x \$10,000 per day) for violations through December 31, 2009.
13. In determining the amount of any civil liability under California Water Code 13385, subsection 13385(e) requires that the Regional Water Board take into account the nature, circumstances, extent, and gravity of the violation, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and,

with respect to the violator, the ability to pay, the effect on its ability to continue business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.

**a. Nature, Circumstances, Extent and Gravity of the Violations**

These annual reports are an important means of determining the quality of stormwater runoff from the Discharger's site and ensuring the Discharger is implementing appropriate control measures at the site. Additionally, these reports are one of the Discharger's primary tools to self-evaluate site compliance with the permit and to identify any needed improvements.

For each annual report due, Regional Water Board sent the Discharger two (2) Notice of Noncompliance letters.

**b. Susceptibility to Cleanup, Cleanup Activities Taken, and Toxicity of the Discharge**

The violation for which liability is proposed is a failure to submit a required report. The report is required to include quantitative and qualitative information on the amounts and/or presence of certain pollutants in discharges from the subject facility, as well as information on remedial actions taken by the Discharger to halt or minimize polluted discharges from its facility. In the absence of this information, it is not possible to make a more specific determination on this factor, and civil liability is not proposed for a specific discharge.

**c. Culpability and Prior History of Violations**

The storm water regulations are applicable to all specified industrial sites on a nationwide basis. All dischargers are required to comply with the Clean Water Act. By filing a Notice of Intent, the Discharger demonstrated its knowledge of and intent to comply with the Permit requirements. The Discharger is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.

As indicated in this complaint, the Discharger has failed to submit its annual reports for two consecutive years despite notices provided by Water Board staff. The file for this project reflects that the Discharger submitted Annual reports for the 2004/2005 and 2005/2006 reporting period, in both cases late, following two late notices each year. Staff have been unable to locate an Annual Report for 2006/2007, but are unable to confirm whether or not it was received. However, the record shows that even for years in which the Discharger has submitted a report, the report has been past due, subject to late notices.

**d. Ability to Pay and Effect on Ability to Continue its Business**

Portosan is an ongoing business. Regional Water Board staff have no information to indicate that the Discharger would be unable to pay the recommended administrative civil liability.

**e. Economic Benefit to the Discharger**

The Discharger has realized cost savings by: late submittal of the annual report, and failure to implement and/or document its Stormwater Pollution Prevention Plan. The proposed administrative civil liability is greater than the economic benefit obtained from the noncompliance.

**f. Other Matters as Justice May Require**

Regional Water Board staff estimate that staff costs associated with addressing the above violations of WDRs are a minimum of \$2,730. This includes staff time to prepare this complaint and public notices. The Discharger has failed to submit the required reports despite multiple notices from the Water Board staff; a significant administrative civil liability should be assessed against this Discharger to protect the integrity of the regulatory program and to indicate to other dischargers subject to the reporting requirements that noncompliance has serious consequences.

14. CWC section 13399.31(d) states that if a discharger fails to submit an annual report within 60 days from the date the first notice is sent, the Regional Water Board shall impose civil liability; CWC section 13399.33(c) requires that penalty to be a minimum of \$1,000 and the costs incurred by the Regional Water Board's staff for enforcement.
15. Costs incurred by Regional Water Board associated with the enforcement action are a minimum of \$2,730. This includes staff time to prepare this Complaint and public notice.
16. Based on the requirements for minimum penalties, as described in Finding 14 above, the total minimum penalty for the two late reports is \$2,000, plus \$2,730 in staff costs incurred, for a total of \$4,730.
17. The issuance of a Complaint for Administrative Civil Liability does not have the potential to result in a physical change in the environment and, therefore, is not a "project" subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.). It is also exempt from CEQA in accordance with title 14, California Code of Regulations, section 15321, subsection (a)(2).

18. Further failure to comply with the General Permit or amendments thereof beyond December 31, 2009, may subject the Discharger to additional administrative civil liability, and/or other appropriate enforcement actions(s), including referral to the Attorney General.

**PORTOSAN CO LLC IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer proposes that the Discharger be assessed an administrative civil liability in the amount of ten thousand four hundred thirty dollars (\$10,730) for failure to submit the Annual Storm Water Reports for the 2007/2008 and 2008/2009 fiscal years by the July 1, 2008 and July 1, 2009, respectively, as required by the General Permit.
2. The Assistant Executive Officer proposes that the amount of the assessed administrative liability be reduced to six thousand two hundred thirty dollars (\$6,730) if the Discharger submits complete Annual Storm Water Reports for the 2007/2008 fiscal year and the 2008/2009 fiscal year by April 1, 2010.
3. The Regional Water Board will conduct a hearing on this Complaint on March 25, 2010, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to this Complaint by February 15, 2010. By doing so, the Discharger agrees to:
  - a. Submit the 2007/2008 and 2008/2009 Annual Storm Water Reports by April 1, 2010 and
  - b. Be liable for a total assessed penalty of ten thousand seven hundred thirty dollars (\$10,730) to the State Water Resources Control Board, Waste Discharger Permit Fund, by February 15, 2010. This liability shall be reduced to six thousand seven hundred thirty dollars (\$6,730) if Discharger submits the two annual storm water reports in compliance with condition 3.a., above by February 15, 2010.
4. If the Discharger waives the hearing and pays the liability, the resulting settlement may become effective on February 16, 2010. If there are significant public comments, the Assistant Executive Officer may withdraw the Complaint, reissue it as appropriate, or take other appropriate action.
5. If the Regional Water Board holds a hearing, it may choose to impose an administrative civil liability in the amount proposed or for a different amount, decline to seek civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount

to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing.

6. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability that stem from violation of the Clean Water Act, including NPDES permit violations. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.
7. Notwithstanding the issuance of this Complaint, the Regional Water Board shall retain the authority to assess additional penalties for violations of the Discharger's storm water permit.

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Luis G. Rivera  
Assistant Executive Officer

January 20, 2010